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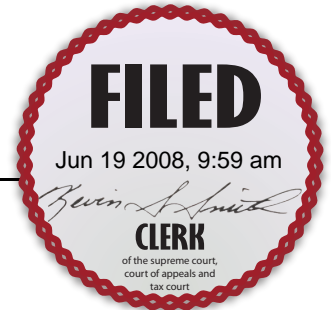
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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE TERMINATION OF THE )  
PARENT-CHILD RELATIONSHIP OF: E.R.B. )

ERODNEY BLAIR, )

Appellant-Respondent, )

vs. )

No. 45A03-0802-JV-54

LAKE COUNTY OFFICE OF FAMILY AND )  
CHILDREN and LAKE COUNTY COURT )  
APPOINTED SPECIAL ADVOCATE )

Appellees-Petitioners. )

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APPEAL FROM THE LAKE SUPERIOR COURT  
JUVENILE DIVISION

The Honorable Mary Beth Bonaventura, Judge  
Cause No. 45D06-0705-JT-84

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**June 19, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Respondent, ERodney Blair (Blair), appeals the termination of his parental rights to E.R.B..

We affirm.

## ISSUES

Blair raises two issues for our review, which we restate as:

- (1) Whether the State presented clear and convincing evidence to support the termination of Blair's parental rights to E.R.B.; and
- (2) Whether Blair's due process rights were violated when the trial court conducted the termination proceedings without his participation.

## FACTS AND PROCEDURAL HISTORY

Chemere Battle (Battle) gave birth to two children, A.B., who was born on February 8, 2004, and E.R.B., who was born on August 31, 2005. In April of 2006, a relative of Battle's contacted the Lake County Department of Child Services (LCDCS) to report that Battle was homeless, often living in cars, had been leaving her children with a number of different people for periods of up to a week at a time, and that Battle abused crack cocaine. LCDCS believed that Blair, the alleged father of E.R.B., was incarcerated at the time. On or about April 24, 2006, A.B. and E.R.B. were made temporary wards of the State, and placed with a foster family. Battle was provided a case manager and opportunities for services, including parenting classes and counseling sessions with the ultimate goal of reunification of Battle with A.B. and E.R.B. Battle only attended one parenting class and never showed for a single counseling session. On July 12, 2006, the trial court found the children to be in need of

services with respect to Battle. Battle's last communication with the case manager was on August 7, 2006, at a court review. On August 7, 2006, the trial court found adequate service had been made upon the alleged fathers and found the children to be in need of services with respect to each of their alleged fathers.

On May 4, 2007, LCDCS filed a petition for the termination of parental rights of Battle and the alleged fathers. On August 9, 2007, the trial court held a hearing where it reviewed the LCDCS's attempts to locate and serve the alleged fathers of A.B. and E.R.B. The trial court gave the LCDCS more time to serve the alleged fathers and scheduled the termination of parental rights hearing for October 24, 2007. At the October 24, 2007 hearing, the trial court noted on the record that Blair had been served on August 15, 2007, by certified mail at the Wabash Valley Correctional Facility, and had not appeared or contacted the trial court to inform it of his intent to appear. During the hearing, the trial court heard evidence that Battle had abandoned the children with relatives multiple times prior to LCDCS becoming involved, the children had medical issues that were not being attended to at the time when LCDCS intervened, the children had bonded well with the foster parents they had been staying with for several months, and that no relative of A.B. or E.R.B. had come forward to take custody of the children. Additionally, the foster father testified that the foster parents desired to adopt both A.B. and E.R.B. Further, there was testimony that neither alleged father had made any effort to contact LCDCS about the children's wellbeing or whereabouts the entire time that LCDCS had been involved. At the close of evidence, the trial court announced that it would terminate the parent-child relationship of Blair with

E.R.B. That same day, the trial court entered a written order terminating the parent-child relationships between all the parents and children, including Blair and E.R.B.

Blair now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

### *I. Sufficiency of the Evidence*

Blair argues that the State failed to prove by clear and convincing evidence that the parent-child relationship between E.R.B. and him should be terminated. Specifically, Blair contends that the State did not prove that there was a reasonable probability that the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents would not be remedied, or in the alternative that the maintenance of the parent-child relationship posed a threat to the E.R.B.'s well-being, as required by Indiana Code section 31-35-2-4(b)(2)(B).

When reviewing whether the State had supported the termination of parental rights with clear and convincing evidence in *In re W.B.*, 772 N.E.2d 522, 528-29 (Ind. Ct. App. 2002), we began our analysis by stating as follows:

The Fourteenth Amendment to the United States Constitution shields private family matters, such as child rearing, from unwarranted state intrusion. Attending the parents' right to raise their children unimpeded, however, is the corollary responsibility to act in the children's best interest. Failure to do so legitimately triggers state action, not for the purpose of punishing the parents, but to ensure that each child's best interests prevail. Because the ultimate purpose of the law is to protect the child, the parent-child relationship will give way when it is no longer in the child's interest to maintain this relationship.

The involuntary termination of parental rights is the most extreme sanction a court can impose for parenting failures, because it severs all rights of the parents to their children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. Termination of

parental rights is proper where the children's emotional and physical development is threatened. The trial court need not wait until the children are irreversibly harmed such that their physical, mental, and social development is permanently impaired before terminating the parent-child relationship.

*Id.* (citations and quotation marks omitted).

Pursuant to Indiana Code section 31-35-2-4(b)(2)(B), the State is required to prove “there is a reasonable probability that: (i) the conditions that resulted in the child’s removal or the reasons for placement outside the home of the parents will not be remedied; or (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child.” These elements must be proved by clear and convincing evidence. I.C. § 31-37-14-2. Because subsection (b)(2)(B) is written in the disjunctive, the trial court need only find one of the two elements. *Castro v. State Office of Family and Children*, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006), *trans. denied*.

Here, the reason that E.R.B. was placed in the custody of LCDCS was because he was not being cared for. The State proved that prior to the LCDCS taking custody of eight-month-old E.R.B. on April 24, 2006, Battle had been abandoning E.R.B., and Blair was not present to provide the care that E.R.B. needed in Battle’s absence. Additionally, the State proved that Blair made no effort to contact the LCDCS during the eighteen month period between LCDCS taking custody and the date of the hearing on the petition to terminate Blair’s parental rights, notwithstanding that Blair had twice received service of process notifying him that the State was seeking the adjudication of E.R.B. a child in need of services, and later that the State was seeking to terminate Blair’s parental rights.

Additionally, the trial court made notice of the fact that Blair had not made any contact with the trial court during this period either.

Although it is true that Blair could not contribute to E.R.B.'s care because he was incarcerated, it is for this same reason that Blair cannot remedy that situation. *See id.* We have no evidence of when Blair is scheduled to be released from prison, or of the reasons for which he was sent to prison. Nevertheless, we conclude that the State's evidence showing Blair's complete lack of involvement in E.R.B.'s life, and his failure to try to participate in the proceedings adjudicating E.R.B. a child in need of services and the subsequent termination of parental rights despite being served notice of those proceedings, is clear and convincing evidence that the reason for placement outside the home would not be remedied.

## II. *Blair's Due Process Rights*

Blair next contends that he was denied due process of law at the termination of parental rights proceeding because he was not transported to the hearing to testify. However, Blair does not cite to any authority to support his argument on this point, and therefore he has waived this argument. *See* Ind. Appellate Rule 46(A)(8)(a) ("Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . ."). Waiver notwithstanding, we will consider the merits of Blair's contention.

"When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause." *In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 878 (Ind. Ct. App. 2004). However, we have held that due process at proceedings such as parental rights termination

hearings does not provide for an absolute right to be physically present at the proceedings. *Id.* at 879. “Rather, the decision whether to permit an incarcerated person to attend such a hearing rests within the sound discretion of the trial court.” *Id.* Since Blair never made a request to be transported to the proceedings, the trial court could not have abused its discretion by not issuing an order to transport him. *See id.* Therefore, we conclude that Blair’s due process rights were not violated by the trial court.

### CONCLUSION

Based on the foregoing, we conclude that the State proved by clear and convincing evidence that the situation that resulted in the placement of E.R.B. outside of the home would not be remedied, and the trial court did not violate Blair’s due process rights.

Affirmed.

BAKER, C.J., and ROBB, J., concur.